

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Following the Case Management Conference, **IT IS HEREBY ORDERED** that the Joint Case Management Statement is adopted, except as expressly modified by this Order. It is further **ORDERED** that:

## 1 . DATES

Trial Date: Monday, 7/20/2009, 2 days

Pretrial Conference: **Tuesday, 6/30/2009, 4 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 6/3/2009**

Last Day for Expert Discovery: **Friday, 4/10/2009**

Last Day for Rebuttal Expert Disclosure: **Friday, 4/3/2009**

Last Day for Expert Disclosure: **Friday, 3/27/2009**

Close of Non-expert Discovery: **Friday, 3/20/2009**

1       2.     DISCLOSURE AND DISCOVERY

2              The parties are reminded that a failure to voluntarily  
3 disclose information pursuant to Federal Rule of Civil  
4 Procedure 26(a) or to supplement disclosures or discovery  
5 responses pursuant to Rule 26(e) may result in exclusionary  
6 sanctions. Thirty days prior to the close of non-expert  
7 discovery, lead counsel for each party shall serve and file a  
8 certification that all supplementation has been completed.

9              In the event a discovery dispute arises, **lead counsel** for  
10 each party shall meet in person or, if counsel are outside the  
11 Bay Area, by telephone and make a good faith effort to resolve  
12 their dispute. Exchanging letters or telephone messages about  
13 the dispute is insufficient. The Court does not read  
14 subsequent positioning letters; parties shall instead make a  
15 contemporaneous record of their meeting using a tape recorder  
16 or a court reporter.

17              In the event they cannot resolve their dispute, the  
18 parties must participate in a telephone conference with the  
19 Court **before** filing any discovery motions or other papers.  
20 The party seeking discovery shall request a conference in a  
21 letter filed electronically not exceeding two pages (with no  
22 attachments) which briefly explains the nature of the action  
23 and the issues in dispute. Other parties shall reply in  
24 similar fashion within two days of receiving the letter  
25 requesting the conference. The Court will contact the parties  
26 to schedule the conference.

27       3.     MOTIONS

28              Consult Civil Local Rules 7-1 through 7-5 and this

1 Court's standing orders regarding motion practice. Motions  
2 for **summary judgment** shall be accompanied by a statement of  
3 the material facts not in dispute supported by citations to  
4 admissible evidence. The parties shall file a joint statement  
5 of undisputed facts where possible. If the parties are unable  
6 to reach complete agreement after meeting and conferring, they  
7 shall file a joint statement of the undisputed facts about  
8 which they do agree. Any party may then file a separate  
9 statement of the additional facts that the party contends are  
10 undisputed. A party who without substantial justification  
11 contends that a fact is in dispute is subject to sanctions.

12 Summary judgment motions shall be filed as follows: 1)  
13 Plaintiffs' motion for summary judgment shall be filed by  
14 **April 15, 2009**; 2) Defendants' opposition and any cross-motion  
15 for summary judgment shall be filed by **April 9, 2009**; 3)  
16 Plaintiffs' reply to defendants' opposition and opposition to  
17 defendants' cross-motion shall be filed by **May 13, 2009**; 4)  
18 defendants' reply shall be filed by **May 20, 2009**; and 5) a  
19 hearing on the motions is set for **June 3, 2009**.

20 A Chambers copy of all briefs shall be e-mailed in  
21 WordPerfect or Word format to the following address:  
22 bzpo@cand.uscourts.gov.

23 4. MEDIATION

24 By agreement of the parties, this matter has been  
25 referred for an Mediation to be conducted by March 27, 2009,  
26 if possible. The parties shall promptly notify the Court  
27 whether the case is resolved at the Mediation.

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1       5.     SETTLEMENT

2              This case is referred for assignment to a Magistrate  
3          Judge to conduct a settlement conference in May or June of  
4          2009 in the event the case is not resolved at the Mediation.  
5          Counsel will be contacted by that judge's chambers with a date  
6          and time for the conference.

7       6.     PRETRIAL CONFERENCE

8              Not less than thirty days prior to the date of the  
9          pretrial conference, the parties shall meet and take all steps  
10         necessary to fulfill the requirements of this Order.

11             Not less than twenty-one days prior to the pretrial  
12         conference, the parties shall: (1) serve and file a joint  
13         pretrial statement, containing the information listed in  
14         **Attachment 1**, and a proposed pretrial order; (2) serve and  
15         file trial briefs, Daubert motions, proposed findings of fact  
16         and conclusions of law, and statements designating excerpts  
17         from discovery that will be offered at trial (specifying the  
18         witness and page and line references); (3) exchange exhibits,  
19         agree on and number a joint set of exhibits and number  
20         separately those exhibits to which the parties cannot agree;  
21         (4) deliver all marked trial exhibits directly to the  
22         courtroom clerk, Ms. Voltz; (5) deliver one extra set of all  
23         marked exhibits directly to Chambers; and (6) submit all  
24         exhibits in three-ring binders. Each exhibit shall be marked  
25         with an exhibit label as contained in **Attachment 2**. The  
26         exhibits shall also be separated with correctly marked side  
27         tabs so that they are easy to find.

28             No party shall be permitted to call any witness or offer

1 any exhibit in its case in chief that is not disclosed at  
2 pretrial, without leave of Court and for good cause.

3 Lead trial counsel for each party shall meet and confer  
4 in an effort to resolve all disputes regarding anticipated  
5 testimony, witnesses and exhibits. Not less than eleven days  
6 prior to the pretrial conference, the parties shall serve and  
7 file any objections to witnesses or exhibits or to the  
8 qualifications of an expert witness, and any oppositions to  
9 Daubert motions. There shall be no replies.

10 A copy of all pretrial submissions, except for exhibits,  
11 shall be e-mailed in WordPerfect or Word format to the  
12 following address: bzpo@cand.uscourts.gov.

13 At the time of filing the original with the Clerk's  
14 Office, two copies of all documents (but only one copy of the  
15 exhibits) shall be delivered directly to Chambers (Room 15-  
16 6688). Chambers' copies of all pretrial documents shall be  
17 three-hole punched at the side, suitable for insertion into  
18 standard, three-ring binders.

19 Dated: December 16, 2009

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22 Bernard Zimmerman  
United States Magistrate Judge

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**ATTACHMENT 1**

The parties shall file a joint pretrial conference statement containing the following information:

### ( 1 ) The Action.

- (A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.
  - (B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

- (A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.
  - (B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.
  - (C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.
  - (D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

### ( 3 ) Trial Preparation.

A brief description of the efforts the parties have

1 made to resolve disputes over anticipated testimony,  
2 exhibits and witnesses.

- 3 (A) Witnesses to be Called. In  
4 lieu of FRCP 26(a)(3)(A), a  
5 list of all witnesses likely  
6 to be called at trial, other  
7 than solely for impeachment or  
8 rebuttal, together with a  
9 brief statement following each  
10 name describing the substance  
11 of the testimony to be given.  
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- 13 (B) Estimate of Trial Time. An  
14 estimate of the number of  
15 court days needed for the  
16 presentation of each party's  
17 case, indicating possible  
18 reductions in time through  
19 proposed stipulations, agreed  
20 statements of facts, or  
21 expedited means of presenting  
22 testimony and exhibits.
- 23 (C) Use of Discovery Responses. In  
24 lieu of FRCP 26(a)(3)(B), cite  
25 possible presentation at trial  
26 of evidence, other than solely  
27 for impeachment or rebuttal,  
28 through use of excerpts from  
depositions, from  
interrogatory answers, or from  
responses to requests for  
admission. Counsel shall  
state any objections to use of  
these materials and that  
counsel has conferred  
respecting such objections.
- 29 (D) Further Discovery or Motions.  
30 A statement of all remaining  
31 motions, including Daubert  
32 motions.

33 (4) **Trial Alternatives and Options.**

- 34 (A) Settlement Discussion. A  
35 statement summarizing the  
36 status of settlement  
37 negotiations and indicating  
38 whether further negotiations  
39 are likely to be productive.
- 40 (B) Amendments, Dismissals. A  
41 statement of requested or

1 proposed amendments to  
2 pleadings or dismissals of  
3 parties, claims or defenses.

4 (C) Bifurcation, Separate Trial of  
5 Issues. A statement of whether  
bifurcation or a separate  
trial of specific issues is  
feasible and desired.

6 (5) **Miscellaneous.**

7 Any other subjects relevant to the trial of the action,  
or material to its just, speedy and inexpensive  
8 determination.

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ATTACHMENT 2

1  
2 **USDC**  
3 Case No. CV08-03263 BZ  
4 **JOINT** Exhibit No. \_\_\_\_\_

5 Date Entered \_\_\_\_\_

6 Signature \_\_\_\_\_  
7 \_\_\_\_\_

8 **USDC**  
9 Case No. CV08-03263 BZ  
10 **JOINT** Exhibit No. \_\_\_\_\_

11 Date Entered \_\_\_\_\_

12 Signature \_\_\_\_\_  
13 \_\_\_\_\_

14 **USDC**  
15 Case No. CV08-03263 BZ  
16 **PLNTF** Exhibit No. \_\_\_\_\_

17 Date Entered \_\_\_\_\_

18 Signature \_\_\_\_\_  
19 \_\_\_\_\_

20 **USDC**  
21 Case No. CV08-03263 BZ  
22 **PLNTF** Exhibit No. \_\_\_\_\_

23 Date Entered \_\_\_\_\_

24 Signature \_\_\_\_\_  
25 \_\_\_\_\_

26 **USDC**  
27 Case No. CV08-03263 BZ  
28 **DEFT** Exhibit No. \_\_\_\_\_

Date Entered \_\_\_\_\_

Signature \_\_\_\_\_  
\_\_\_\_\_

1 **USDC**  
2 Case No. CV08-03263 BZ  
3 **JOINT** Exhibit No. \_\_\_\_\_

4 Date Entered \_\_\_\_\_

5 Signature \_\_\_\_\_  
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7 **USDC**  
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9 **JOINT** Exhibit No. \_\_\_\_\_

10 Date Entered \_\_\_\_\_

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Date Entered \_\_\_\_\_

Signature \_\_\_\_\_  
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